

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARLES and CHRISTINE HARRIS,	:	CIVIL ACTION
WILLIE DAVIS and NORA WILSON,	:	
on behalf of themselves and all	:	
others similarly situated	:	
	:	
v.	:	
	:	
GREEN TREE FINANCIAL CORP., et al.	:	NO. 97-1128

MEMORANDUM AND ORDER

Fullam, Sr. J. December , 1997

Plaintiffs claim to be the victims of a deceptive home-improvement financing scheme pursuant to which they were fraudulently induced to obtain home-equity loans on their residences in order to finance sub-standard home improvement work. The defendants are the various contractors who failed to perform adequately, and the financial institutions which provided the financing.

Plaintiffs have sought class-action certification, but that issue cannot be resolved until certain other pending motions have been decided: (1) Defendants seek to compel arbitration of all of plaintiffs' claims; and (2) plaintiffs seek a protective order to preclude defendants from contacting any of the potential class-members with settlement offers.

The relevant documents do contain (in very small print,

on the reverse side) an arbitration clause, to the effect that

"All disputes, claims, or controversies arising from or relating to this contract or the relationships which result from this contract, or the validity of this arbitration clause or the entire contract, shall be resolved by binding arbitration by one arbitrator selected by us with the consent of you. This arbitration contract is made pursuant to a transaction in interstate commerce, and shall be governed by the Federal Arbitration Act..."

Plaintiffs have advanced several arguments against the enforceability of this arbitration clause, several of which may have merit; but I consider it necessary to address only one of these challenges. I conclude that the arbitration clause may not be enforced, because it purports to bind only one of the contracting parties, the plaintiff borrower. The agreement provides,

"Notwithstanding anything herein to the contrary, we retain an option to use judicial or non-judicial relief to enforce a mortgage, deed of trust, or other security agreement relating to the real property, or to foreclose on the real property. Such judicial relief would take the form of a lawsuit."

In my view, this one-sided arrangement is unconscionable, and leaves plaintiffs free to litigate their claims if they wish to do so. Defendants' motion to compel arbitration will be denied.

Plaintiffs assert that some of the defendant financial institutions are contacting potential members of the putative class of plaintiffs, and offering to correct any deficiencies in

the home improvements contracted for, in exchange for releases. On the present record, I decline to interfere with the defendants' settlement efforts. It has not yet been determined that class certification would be appropriate. This litigation may or may not arise from a single scheme involving concerted action by all of the defendants; there may or may not be uniformity of legal and factual issues which predominate. If potential class members wish to settle and refrain from participation in a class action, the named plaintiffs lack standing to complain. If a class is certified, or if the settlement attempts can be shown to be fraudulent or misleading, the issue can be re-visited.

An Order follows.

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ORDER

AND NOW, this day of DECEMBER 1977, IT IS ORDERED:

1. Defendants' Motion to Compel Arbitration is
DENIED.
2. Plaintiffs' Motion for Protective Order is DENIED.

John P. Fullam, Sr. J.